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OFFICE OF PETITIONS

In re Application of	:
Todd F. Mozer	:
Application No. 09/875,261	:
Filed: June 5, 2001	:
Attorney Docket No.: 000001-	:
000800US	:
Title: CLIENT-SERVER SECURITY	:
SYSTEM AND METHOD	:

This is a decision on the petition filed on June 22, 2006, pursuant to 37 C.F.R. §1.181, requesting that the holding of abandonment in the above-identified application be withdrawn.

BACKGROUND

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R. §1.113 in a timely manner to the final Office action mailed September 19, 2005, which set a shortened statutory period for reply of three months. No extensions of time under the provisions of 37 C.F.R. §1.136(a) were obtained, and no further responses were received. Accordingly, the above-identified application became abandoned on December 20, 2005. A notice of abandonment was mailed on May 16, 2006.

RELEVANT PORTION OF THE MPEP

MPEP 711.03(c) states, in part:

PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION

In *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of *Delgar*, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of *Delgar* is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133).

To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).

Evidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment. Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment. See *Lorenz v. Finkl*, 333 F.2d 885, 889-90, 142 USPQ 26, 29-30 (CCPA 1964); *Krahn v. Commissioner*, 15 USPQ2d 1823, 1824 (E.D. Va 1990); *In re Application of Fischer*, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1988).

Two additional procedures are available for reviving an application that has become abandoned due to a failure to reply to an Office Action: (1) a petition under 37 CFR 1.137(a) based upon unavoidable delay; and (2) a petition under 37 CFR 1.137(b) based on unintentional delay.

ANALYSIS

With the present petition, Petitioner has asserted that the Office communication was not received, has attested to the fact that a search of the file jacket and docket records indicates that the Office communication was not received, and has provided a copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed.

Petitioner has further indicated that the Office communication was returned to the Office on September 26, 2005. A search of

the electronic file confirms that the mailing was returned to the Office.

The electronic file further reveals that at the time the Office action was mailed (September 19, 2005), the correspondence address of record was different from the present correspondence address, as indicated by the Change of Correspondence Address that Petitioner filed on October 24, 2005.

It is clear that sometime prior to October 24, 2005, Petitioner moved from San Jose to Santa Clara.

Applicant has not provided any indication as to when he moved. Therefore, it is not clear whether the Office action was properly mailed by this Office to the correspondence address of record in San Jose and Petitioner did not receive the Office action, or whether Petitioner had moved to Santa Clara prior to the mailing of the Office action, but failed to timely notify this Office that he was no longer located at the address of record.

Petitioner must clarify, on the record, when his correspondence address changed.

As such, the petition must be **DISMISSED**.

Any reply must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. 1.181(a)." This is not a final agency action within the meaning of 5 U.S.C 704.

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail¹, hand-delivery², or facsimile³.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225⁴. All other inquiries

¹ Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

² Customer Window, Randolph Building, 401 Dulany Street, Alexandria, VA, 22314.

³ (571) 273-8300- please note this is a central facsimile number.

⁴ Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. §1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).

concerning examination procedures or status of the application
should be directed to the Technology Center.



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United States Patent and Trademark Office